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Third Party Plaintiffs Jaco Pastorius, Inc., Mary
Pastorius, John Pastorius, Felix Pastorius and
Julius Pastorius*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

30TH STREET GUITARS, INC.,
Plaintiff,

-against-

JACO PASTORIUS, INC., MARY PASTORIUS,
JOHN PASTORIUS, FELIX PASTORIUS
and JULIUS PASTORIUS

Defendants.

JACO PASTORIUS, INC., MARY PASTORIUS,
JOHN PASTORIUS, FELIX PASTORIUS
and JULIUS PASTORIUS,

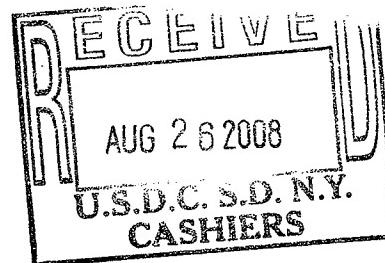
Third-Party Plaintiffs,

-against-

MATTHEW BREWSTER, NED BREWSTER
and DOES 1-2,

Third-Party Defendants.

Defendants/Counterclaimants/Third Party Plaintiffs Jaco Pastorius, Inc., Mary Pastorius,
John Pastorius, Felix Pastorius and Julius Pastorius (collectively, "Defendants" or "the Pastorius
Parties"), for their answer to the complaint filed on June 26, 2008 ("Complaint") by plaintiff 30th



Case No.: 08 CIV 5745 (SHS)

**ANSWER, COUNTERCLAIM,
JURY DEMAND AND
THIRD PARTY COMPLAINT**

Street Guitars, Inc. ("Plaintiff"), allege as follows:

PARTIES

1. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph No. 1, and accordingly deny such allegations.
2. Admit the allegations contained in Paragraph No. 2.
3. Admit the allegations contained in Paragraph No. 3.

JURISDICTION AND VENUE

4. Admit that this action is based on the cause of action stated, and otherwise deny the allegations of Paragraph 4.
5. The allegations contained in Paragraph No. 5 are comprised in whole or in part of legal arguments and/or conclusions of law as to which no responsive pleading is required. To the extent that a responsive pleading may be required, Defendants deny the allegations contained in Paragraph No. 5.
6. The allegations contained in Paragraph No. 6 are comprised in whole or in part of legal arguments and/or conclusions of law as to which no responsive pleading is required. To the extent that a responsive pleading may be required, Defendants deny the allegations contained in Paragraph No. 6.
7. The allegations contained in Paragraph No. 7 are comprised in whole or in part of legal arguments and/or conclusions of law as to which no responsive pleading is required. To the extent that a responsive pleading may be required, Defendants deny the allegations contained in Paragraph No. 7.

ALLEGATIONS

8. Deny knowledge or information sufficient to form a belief as to the truth or falsity

of the allegations contained in Paragraph No. 8, and accordingly deny each and every allegation therein.

9. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 6,"¹ and accordingly deny each and every allegation therein, except admit that Jaco Pastorius was recognized as an innovator and virtuoso on the bass guitar, that he suffered from depression at various times in his life, and that he died in 1987 at the age of 35.

10. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 7,"² and accordingly deny each and every allegation therein.

11. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 9,"³ and accordingly deny each and every allegation therein.

12. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 10," and accordingly deny each and every allegation therein.

13. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 11," and accordingly deny each and every allegation therein.

14. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 12," and accordingly deny each and every

¹ Plaintiff's Complaint erroneously numbers its ninth paragraph as "No. 6."

² Plaintiff's Complaint erroneously numbers its tenth paragraph as "No. 7."

³ Plaintiff's Complaint erroneously numbers its eleventh paragraph as "No. 9." Subsequent paragraphs are numbered sequentially, also in error. For the sake of convenience, Defendants will respond to subsequent paragraphs as they are numbered in Plaintiff's complaint.

allegation therein.

15. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 13," and accordingly deny each and every allegation therein.

16. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 14," and accordingly deny each and every allegation therein.

17. Deny the allegations in Paragraph "No. 15," except admit that a representative of defendants contacted Plaintiff and demanded the rightful return of Jaco Pastorius' bass guitar, and that Matthew Brewster refused to return it.

18. Deny the allegations in Paragraph "No. 16," except admit that a letter, dated January 3, 2008, was sent from the law firm of Shukat Arrow Hafer Weber & Herbsman, LLP and affirmatively refer to the contents of such.

19. Deny the allegations in Paragraph "No. 17," except admit that the heirs to the estate of Jaco Pastorius are shareholders of Jaco Pastorius, Inc.

20. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 18," and accordingly deny each and every allegation therein.

21. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "No. 19," and accordingly deny each and every allegation therein.

FIRST CLAIM FOR RELIEF – ORDER QUIETING TITLE

22. Repeat and reallege Paragraphs 1 through 21 above, as if completely set forth herein.

23. Deny the allegations contained in Paragraph "No. 21."

SECOND CLAIM FOR RELIEF – DECLARATORY JUDGMENT

24. Repeat and reallege Paragraphs 1 through 23 above, as if completely set forth herein.
25. Deny the allegations contained in Paragraph "No. 23."
26. Deny the allegations contained in Paragraph "No. 24."

THIRD CLAIM FOR RELIEF – INJUNCTIVE RELIEF

27. Repeat and reallege Paragraphs 1 through 26 above, as if completely set forth herein.
28. Deny the allegations contained in Paragraph "No. 26."

PRAYER FOR JUDGMENT

29. Deny that Plaintiff is entitled to the relief set forth in the "WHEREFORE" paragraph on page 6 of the Complaint.

**AS AND FOR A
FIRST AFFIRMATIVE DEFENSE**

30. The Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A
SECOND AFFIRMATIVE DEFENSE**

31. Plaintiff's claims are barred by the doctrine of unclean hands.

**AS AND FOR A
THIRD AFFIRMATIVE DEFENSE**

32. Plaintiff's claims are barred under the principles of waiver, laches, consent, estoppel, acquiescence, or ratification.

**AS AND FOR A
FOURTH AFFIRMATIVE DEFENSE**

33. Plaintiff is not a *bona fide* purchaser in good faith of Jaco Pastorius' bass guitar, as the bass guitar is stolen property and Plaintiff either knew or reasonably believed it was stolen, or recklessly disregarded facts that indicated it was stolen, when taking possession of it.

**AS AND FOR A
FIFTH AFFIRMATIVE DEFENSE**

34. Plaintiff is not an innocent purchaser of Jaco Pastorius' bass guitar, as the bass guitar is stolen property and Plaintiff either knew or reasonably believed it was stolen, or recklessly disregarded facts that indicated it was stolen, when taking possession of it.

35. Defendant reserves the right to add additional defenses, including affirmative defenses, as they may become apparent during discovery, and specifically reserves the right to amend the Answer to the Complaint to allege such defenses as they become apparent.

WHEREFORE, the Pastorius Parties request the following relief:

- (a) That the Court dismiss the Complaint with prejudice.
- (d) That the Court award Defendant such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action, including attorneys' fees.

COUNTERCLAIM AND THIRD PARTY COMPLAINT

Defendants/counterclaimants and third party plaintiffs Jaco Pastorius, Inc., Mary Pastorius, John Pastorius, Felix Pastorius and Julius Pastorius (collectively, the "Pastorius Parties"), for their counterclaim against 30th Street Guitars, Inc. and for their third party claim against Matthew Brewster, Ned Brewster, and Does 1-2 (30th Street Guitars, Inc., Matthew Brewster, Ned Brewster and Does 1-2, collectively, "Counterclaim and Third Party Defendants"), allege as follows:.

SUBSTANCE OF THE COUNTERCLAIM

36. John Francis "Jaco" Pastorius is arguably the greatest bass guitar player that ever lived. Over the course of his too-short career, Jaco released numerous albums under his own name and with the legendary jazz ensemble Weather Report, as well as with Grammy-award

winning musicians such as Herbie Hancock, Joni Mitchell, and Pat Metheny. Receiving critical and popular acclaim, and credited with completely revolutionizing the way the bass guitar was played, Jaco was catapulted to international stardom. By the time of his premature death in 1987, at the age of 35, Jaco Pastorius was widely considered the “World’s Greatest Bass Player.”

37. Throughout his career, Jaco was largely identified through his use of two specific Fender Jazz bass guitars. One of these guitars, a 1962 Fender fretless that Jaco played constantly, was known by Jaco and his fans as the “Bass of Doom,” and is the subject of this litigation (the “Bass”). The Bass began as a fretted bass guitar, but Jaco removed the frets, filled the grooves with wood, and refinished the neck with several layers of marine epoxy. The resulting instrument sounded unlike any other guitar available, and became synonymous with Jaco himself. Its presence on many of Jaco’s most popular recordings is unmistakable, and irreplaceable.

38. In 1986, Jaco was suffering from bouts of depression and mental illness. It was at this time that the Bass of Doom was stolen from Jaco. Shortly thereafter, he spent time receiving treatment in Bellevue Hospital, where he remained distraught over the theft of the Bass. Indeed, the theft of this unique piece of music history was widely publicized. Under Jaco’s direction, numerous posters and flyers were displayed and distributed throughout Washington Square Park, Greenwich Village, and along 48th Street’s famous “Music Row.” These efforts were ultimately unsuccessful, and the location of the Bass remained one of music’s best kept secrets until last year.

39. In early December 2007, the Pastorius Parties learned that Matthew Brewster and his brother Ned Brewster had come into possession of the Bass, famously missing for over 20 years. Matthew Brewster, a music professional with years of experience buying, selling and

repairing guitars, allegedly purchased the Bass for \$400 from an individual who walked in off the street. Mr. Brewster was now claiming ownership of and title to this legendary instrument. The Bass – whose monetary value is exceeded only by its sentimental value to the Pastorius family – rightfully belongs to the Pastorius Parties, as the heirs to Jaco's estate. This historically significant instrument, stolen from their father years before, is the final, tangible representation of his legacy. Despite this, Mr. Brewster never once reached out to the Pastorius family after receiving the Bass and, even after they had contacted him directly, still refused to return the Bass to Jaco's heirs. Accordingly, to protect their rights to the Bass, the Pastorius Parties bring this counterclaim and third party claim for a declaration of ownership in the Bass and its replevin, and damages attributable to its wrongful conversion.

THE PARTIES

40. Jaco Pastorius, Inc. is a corporation organized and existing under the laws of Florida, with a principal place of business at 376 North Harbor City Boulevard, B-265, Melbourne, Florida 32935.

41. Mary Pastorius, John Pastorius, Felix Pastorius and Julius Pastorius are the heirs to the estate of Jaco Pastorius. Each of them is a resident of the State of Florida.

42. 30th Street Guitars, Inc. is, upon information and belief, a corporation organized and existing under the laws of the State of New York, with a principal place of business at 236 West 30th Street, New York, New York 10001.

43. Matthew Brewster is, upon information and belief, the owner, chief executive officer, and sole proprietor of 30th Street Guitars, Inc., and is a resident of the State of New York. Matthew Brewster controlled and/or directed the acts complained of in this counterclaim and third party complaint.

44. Ned Brewster is, upon information and belief, the brother of Third Party Defendant Matthew Brewster, and is a resident of the State of New York. Upon information and belief, Ned Brewster, along with Matthew Brewster, directed, controlled and/or participated in the acts complained of in this counterclaim and third party complaint.

45. Doe 1 is an as yet unnamed party that, upon information and belief, wrongfully obtained the Bass and purported to sell the same to Matthew Brewster. The Pastorius Parties will amend this counterclaim and third party complaint to allege Doe 1's true identity and capacity once this information is ascertained.

46. Doe 2 is an as yet unnamed party that was and/or is involved in the wrongful detention of the Bass. The Pastorius Parties will amend this counterclaim and third party complaint to allege Doe 2's true identity and capacity once this information is ascertained.

JURISDICTION AND VENUE

47. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as there is diversity between the parties and the matter exceeds, exclusive of interest and costs, the sum of seventy-five thousand dollars.

48. This Court has jurisdiction to grant the relief requested pursuant to 28 U.S.C. §§ 1655, 2201(a) and 2202.

49. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a) and 1655.

FACTUAL ALLEGATIONS

50. John Francis "Jaco" Pastorius ("Jaco") is one of the most well known and highly regarded bass players who ever lived. Prior to his premature death at age 35 in 1987, Jaco toured the world to international acclaim and made numerous celebrated recordings, both alone and

with other notable musicians such as Pat Metheny, Joni Mitchell, Herbie Hancock, and the fusion ensemble Weather Report.

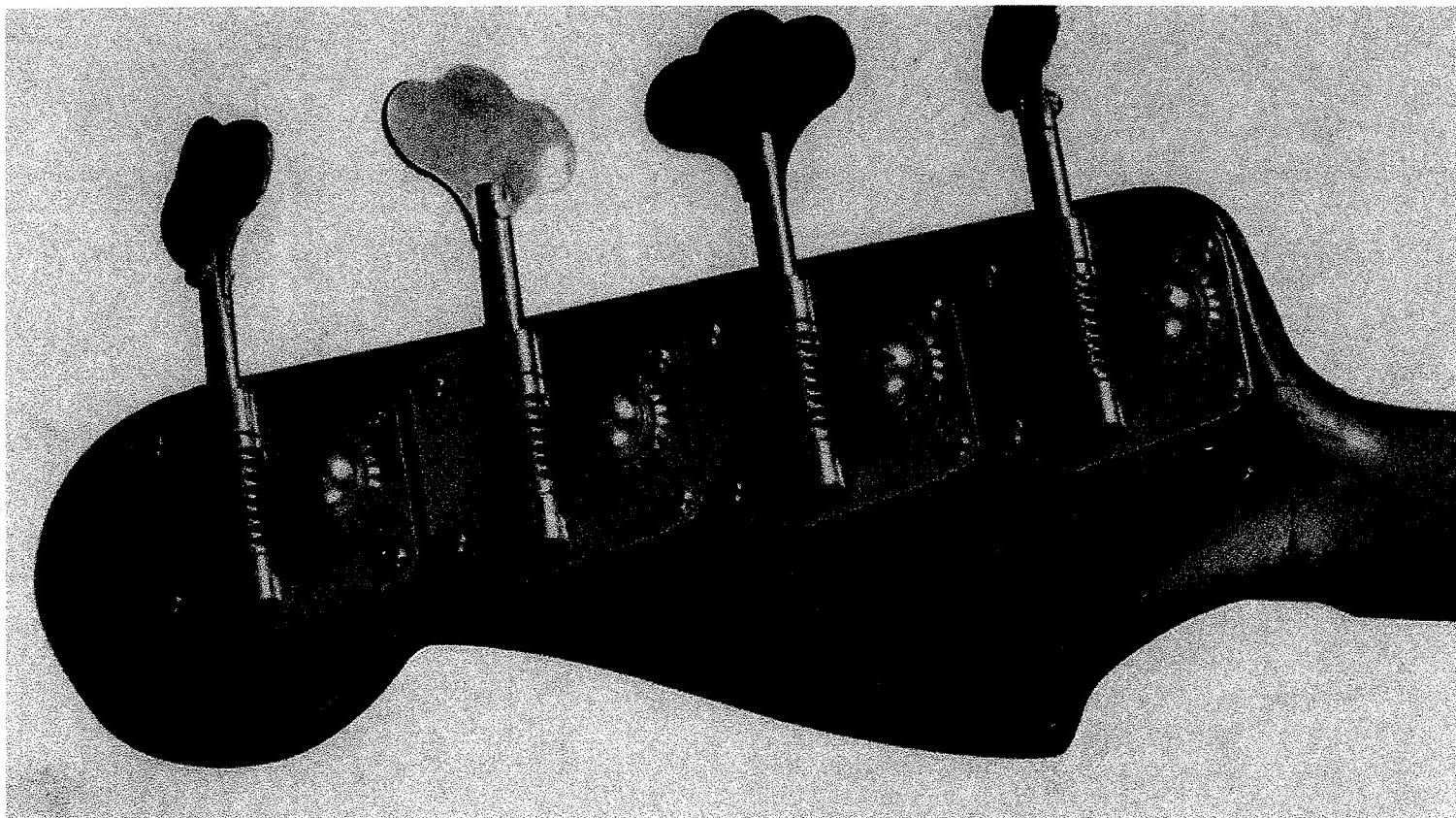
51. Jaco was an innovative musician whose influence is still heard and felt today. Jaco pioneered new styles of playing that revolutionized the bass guitar, and to this day is regarded as one of the most skilled and influential bass players of all time. In 1988, Jaco was inducted into the *Down Beat* Jazz Hall of Fame, the only electric bassist to ever receive this distinction and honor. In 2006, Jaco was voted “The Greatest Bass Player Who Has Ever Lived,” based on artists’ and critics’ submissions to *Bass Guitar Magazine* (UK).

52. Throughout his career, Jaco was uniquely identified with two specific bass guitars, one of which was the Bass, a 1962 Fender Jazz bass guitar known to Jaco and his fans simply as the “Bass of Doom.” The Bass was originally fretted, but Jaco personally removed the frets and refinished the instrument’s neck so it would play as a fretless bass. Jaco played the Bass both in live performances and on multiple recordings, and over time the Bass developed notoriety in and of itself, as uniquely associated with Jaco and his revolutionary style of playing . An image of Jaco playing the Bass is included below:



53. The Bass had an unmistakable sound that is apparent on many of Jaco's recordings. When combined with Jaco's inimitable playing technique, the Bass created a tone more like a cello than a bass guitar, one that ultimately became synonymous with Jaco and his music. This signature tone made the "Bass of Doom" perhaps the most famous bass guitar of all time.

54. In late 1985, the Bass was severely damaged during an argument. Jaco sent the Bass to his friend Kevin Kaufman, an accomplished guitar luthier from south Florida, for painstaking repairs. After months of intricate work, Mr. Kaufman was able to repair and refinish the Bass. Upon doing so, Mr. Kaufman engraved a prominent inscription on the headstock of the Bass, under the finish: "Custom rebuilt for JACO PASTORIUS / by Kevin Kaufman & Jim Hamilton / West Palm Beach, Flordia [sic] / February 1986." An image of the Bass' headstock, with this inscription, is included below:



55. In the summer of 1986, and just prior to Jaco entering Bellevue hospital, the Bass was stolen from Jaco. Jaco and his family and supporters made significant efforts to locate the Bass and/or secure its safe return, including the posting of flyers and posters throughout New York City, informal investigations into the contemporary New York and Florida music scenes, and mention of the stolen Bass in numerous publications (including Jaco's official biography, *Jaco* by Bill Milkowski, which was published in 1995 and featured pictures of the Bass as well as the flyers seeking its return). Despite these efforts, the Bass was never found, and its location remained unknown for over twenty years.

56. Upon Jaco's death intestate in 1987, his estate – including the stolen Bass – passed to his natural heirs, his four children Mary Pastorius, John Pastorius, Felix Pastorius and Julius Pastorius. In 1995, these individuals formed Jaco Pastorius, Inc. to preserve and perpetuate their father's legacy.

57. At some point between 1986 and 2006, Doe 1 wrongfully obtained possession of the stolen Bass.

58. In late 2007, the Pastorius Parties learned that an individual named Matthew Brewster, and his brother Ned Brewster, had come into possession of the Bass nearly two years earlier. Matthew Brewster allegedly purchased the Bass for \$400 from Doe 1, an individual who walked in off of the street.

59. Upon information and belief, the Bass still prominently features Mr. Kaufman's inscription on the back of its neck, and still bears a metal plate with a serial number reflecting the instrument's 1960-62 vintage. Despite this information, Matthew Brewster never once reached out to the Pastorius family.

60. Through a representative, the Pastorius Parties telephoned Matthew Brewster,

informed him that the Bass was stolen property, asserted their ownership rights in it, and demanded its return. Matthew Brewster denied the Pastorius Parties' rights to the Bass, and refused to return it to them. In that same call, Matthew Brewster was offered a \$50,000 reward for the safe return of the Bass, but still refused to return it to the Pastorius Parties. Subsequently, the Pastorius Parties' representative had two more telephone conversations with Matthew Brewster, and each time Mr. Brewster refused to return the Bass. Upon information and belief, Ned Brewster was also listening in on, and was a party to, at least one of these telephone calls.

61. On or about January 2, 2008, attorneys from the firm Shukat Arrow Hafer Weber & Herbsman, LLP, on behalf of the Pastorius Parties, sent Matthew Brewster a letter putting him on notice that the Bass was stolen property, and demanding that it promptly be returned to the Pastorius Parties. Again, Mr. Brewster refused to honor this demand.

62. In or about February 2008, Felix Pastorius, an accomplished bass guitarist in his own right, went to 30th Street Guitars with his brother John Pastorius and arranged with Matthew and Ned Brewster to examine and play the Bass. Upon information and belief, the Bass was at that time in the possession of Ned Brewster, who brought it that day to 30th Street Guitars.

63. Upon information and belief, Matthew Brewster, in late 2007 or early 2008 and in connection with the twentieth anniversary of Jaco's death, approached *Bass Player* magazine about writing an article concerning the Bass. This article ultimately appeared in the March 2008 issue of *Bass Player*. In connection with this article, Mr. Brewster (who declined to identify himself within the published article) allowed the Bass to be played and verified for authenticity by purported bass experts such as Will Lee, Victor Wooten and Victor Bailey.

64. Upon information and belief, Matthew Brewster, in the wake of publicity generated by the *Bass Player* magazine article, received multiple offers in excess of \$100,000 for

the sale of the Bass.

65. Upon information and belief, the Bass is currently in the possession, custody or control of Matthew Brewster's brother, Ned Brewster, and/or others working in connection with Matthew Brewster, somewhere within this judicial district.

66. By retaining and seeking to sell a unique and irreplaceable piece of music history that rightfully belongs to the heirs of the man from whom it was stolen, Counterclaim and Third Party Defendants are subject to a declaration that the Bass rightfully belongs to the Pastorius Parties and that Counterclaim and Third Party Defendants have no claim to it.

67. As a result of Counterclaim and Third Party Defendants' refusal to return the Bass to the Pastorius Parties upon their demand to do so, the Pastorius Parties are entitled to replevin of the Bass.

68. As a result of Doe 1's wrongful conversion of the Bass, the Pastorius Parties are entitled to damages attributable to that conversion.

**FIRST COUNTERCLAIM FOR RELIEF -
DECLARATORY JUDGMENT**

69. The Pastorius Parties repeat and incorporate by reference the allegations in Paragraphs 36-68 above, as if completely set forth herein.

70. By virtue of the foregoing, the Pastorius Parties are entitled to a declaration that they are the rightful owners of the Bass.

71. By virtue of the foregoing, the Pastorius Parties are entitled to a declaration that Counterclaim and Third Party Defendants have no claim, right or title in or to the Bass.

**SECOND COUNTERCLAIM FOR RELIEF -
REPLEVIN**

72. The Pastorius Parties repeat and incorporate by reference the allegations in Paragraphs 36-71 above, as if completely set forth herein.

73. The Pastorius Parties are the rightful owners of the Bass, and are entitled to its immediate possession.

74. Upon information and belief, Counterclaim and Third Party Defendants, or some of them, have wrongfully detained the Bass for over two years, and have refused the Pastorius Parties' demands for its return.

75. Upon information and belief, Counterclaim and Third Party Defendants continue to possess the Bass, and are not holding it for the collection of taxes, assessments or fines, nor as an attachment or execution against the Pastorius Parties' property.

76. Counterclaim and Third Party Defendants' wrongful detention of the Bass has damaged the Pastorius Parties in an amount to be determined at trial.

77. As a result of Counterclaim and Third Party Defendants' conduct, the Pastorius Parties are entitled to replevin of the Bass and damages caused by its wrongful detention.

THIRD COUNTERCLAIM FOR RELIEF - CONVERSION

78. The Pastorius Parties repeat and incorporate by reference the allegations in Paragraphs 36-77 above, as if completely set forth herein.

79. In 1986, Jaco Pastorius was the owner of the Bass and was entitled to its immediate possession. Since Jaco's death in 1987, the Pastorius Parties, as the heirs to Jaco's estate, are the owners of the Bass, and have been and remain entitled to its immediate possession.

80. In or about July 1986, a person unknown to the Pastorius Parties wrongfully and unlawfully took the Bass from Jaco's possession and converted it to his or her own use and benefit.

81. In December 2007, the Pastorius Parties discovered that Doe 1 had come into possession of the Bass and converted it to his or her own use and benefit, all to the damage of the

Pastorius Parties in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Pastorius Parties pray that the Court enter judgment as follows:

1. An order and judgment declaring the Pastorius Parties the rightful owners of the Bass.
2. An order and judgment that the Counterclaim and Third Party Defendants have no claim, right or title in or to the Bass.
3. An order and judgment that the Bass be immediately turned over to the Pastorius Parties or their designated representative.
4. An order awarding the Pastorius Parties all damages caused by the acts forming the bases of this counterclaim and third party complaint and/or as a result of the Counterclaim and Third Party Defendants' wrongful possession of the Bass.
5. An order awarding the Pastorius Parties any and all profits, gain and advantages realized by the Counterclaim and Third Party Defendants from their wrongful possession of the Bass and/or the exploitation thereof.
6. An order awarding the Pastorius Parties their reasonable attorneys' fees in this action.
7. An order awarding the Pastorius Parties their costs and expenses in this action.
8. An order awarding the Pastorius Parties exemplary or punitive damages.
9. Such other and further relief as the Court may deem just and proper

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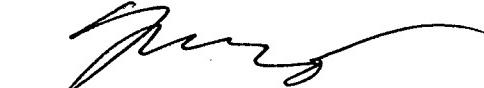
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DEMAND FOR JURY TRIAL

The Pastorius Parties demand a jury trial on all issues so triable.

Dated: New York, New York
 August 26, 2008

KILPATRICK STOCKTON LLP



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